
(2020) 09 SHI CK 0268
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4020 Of 2020

Satnam Singh	Vs	APPELLANT
State Of Himachal Pradesh And Others		RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16, 39A, 142, 226

Citation : (2020) 09 SHI CK 0268

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : A.S. Rana, Ashok Sharma, Ranjan Sharma, Vikas Rathour, Desh Raj Thakur, Bhupinder Thakur, Seema Sharma, Svaneel Sharma

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The petitioner was disqualified from appearing in the Personality-cum-Suitability test for the posts of Himachal Pradesh Police Constables advertised in 2019, hence, he has preferred instant writ petition.

2. Facts:-

2(i) On 3.3.2019, respondents invited online applications for various posts of Police Constables. Last date for receipt of applications was 30.04.2019. It was further mentioned in the advertisement that 'Candidate must have registration in any of the Employment Exchanges of HP, Heavy Transport Driver Licence (for the post of Constable Driver only), Himachali bonafide and Reserve Category certificates all valid as on the date of submission of Application Form. His/her application form for the recruitment to the post of Constable will be entertained only in the district of which he/she is a Bonafide resident'.

2(ii) Petitioner applied as an OBC candidate against the post meant for OBC category. Alongwith his online application, he also uploaded his OBC certificate

issued on 28.09.2017. The certificate itself reflected its validity period as one year from the date of issuance. Thus this certificate issued on 28.9.2017 was valid only till 27.9.2018. The certificate had lost its efficacy on the date of its uploading by the petitioner.

2(iii) Petitioner qualified the physical standard and written test held by the respondents on 8.9.2019 and was called for personality test scheduled for 5.11.2019. In the interregnum, petitioner obtained a fresh OBC certificate dated 29.6.2019, valid for one year from the date of issuance. He appeared for undertaking Personality-cum-Suitability test alongwith his fresh OBC certificate dated 29.6.2019. At this stage, respondents disqualified his candidature for the reason that 'Candidate could not produce valid OBC certificate for relevant period. Hence candidature disqualified.'

2(iv) Aggrieved against the rejection of his candidature, petitioner has filed the instant writ petition praying for direction to the respondents to hold his Personality test/Interview and consider him for OBC category for the posts in question.

3. Submissions

3(i) Learned counsel for the petitioner contended that on 5.11.2019, for appearing in the Personality-cum-Suitability test, petitioner had produced before the respondents his fresh OBC certificate dated 29.6.2019, which was valid on that day and was effective till 28.6.2020, therefore, his disqualification on 5.11.2019 was illegal.

3(ii) Whereas, learned Additional Advocate General submitted that the selection process was held under the terms and conditions of the advertisement/notification dated 3.3.2019. The terms and conditions were unambiguous and clear that a candidate alongwith his online application was also required to upload requisite certificates including the reserved category certificate, valid as on the date of submission of application. Petitioner had applied for the posts of Constable reserved for OBC category candidates within the cut-off date prescribed in the advertisement. However, his OBC certificate uploaded alongwith his online application had long ceased to be valid. It is admitted case of the petitioner that at the time of applying for the posts in question, he had uploaded an OBC certificate, which had ceased to be valid. On the date of appearance in the Personality-cum-Suitability test, petitioner had produced an OBC certificate, which was different from the certificate he had uploaded alongwith his application. Petitioner was not in a possession of any OBC certificate valid from 28.9.2018 to 28.6.2019, therefore, rejection of his candidature by the respondents was justified.

4. Observations

4(i) It is not in dispute that the terms and conditions of the advertisement/notification inviting online applications were categorical that all certificates, valid as

on the date of submission of on-line applications were to be uploaded alongwith the online applications before the cut-off date given in the advertisement. The terms and conditions of the advertisement are applicable not only to the petitioner but to all the other candidates, who may be desirous for the posts in question, therefore, strict adherence to the terms and conditions is necessary as nothing can be left for the arbitrary exercise of discretion at the whims and fancies of the authorities.

4(ii) Hon'ble Apex Court in (2016) 4 SCC 754 titled Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another, has held that claims for inclusion in OBC category can be considered even in cases where certificates were not produced by the applicants before the cut-off date notified in the advertisement. Relevant paragraphs from the judgment are extracted hereinafter:-

"14. The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa (supra). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India as well as Valsamma Paul v. Cochin University & Ors. The learned single Judge in the case of Pushpa (supra) also considered another judgment of Delhi High Court, in the case of Tej Pal Singh (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

18. In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15,

16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus,

erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (*supra*). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored.

4(iii) The factual situation in the instant case is different. Petitioner had uploaded his OBC certificate alongwith his online application. This OBC certificate had ceased to be valid on the date of applying for the post. Petitioner had no valid OBC certificate issued by the competent authority for the period 28.9.2018 to 28.6.2019. His second OBC certificate was issued by the competent authority only on 29.6.2019. The second certificate cannot be made applicable with retrospective effect from the date when the petitioner had applied for the post in question. It cannot be said that the petitioner belonged to OBC category on the date of applying for the post in question.

4(iv) In this regard, it will also be apposite to refer to a order passed by Hon'ble Apex Court in SLP (C) No.14948/2016 titled Karn Singh Yadav Vs. Government of NCT of Delhi & others dated 24.01.2020, wherein the judgment in Ram Kumar Gijroya (*supra*) was referred by the Hon'ble Division Bench of the Apex Court for consideration by the Larger Bench of three Judges for the following reasons:-

"We have heard learned counsel on both sides and perused the record including the judgment of this Court in the case of Ram Kumar Gijroya (*supra*). In the case of Ms. Pushpa (*supra*), which was referred to in Ram Kumar Gijroya (*supra*) though the applicant had moved an application much prior to the date of the advertisement, the office of the competent authority took considerable time to make the required OBC certificate available. It was in such circumstances that the learned Single Judge of the Delhi High Court held that the applicant cannot be made to suffer for lapse on part of the SDM office in issuing the OBC certificate. In the case of Gaurav Sharma v. State of U.P. & Ors. reported in AIR 2017 All 116, a Full Bench of Allahabad High Court disagreed with the view expressed in the case of Ms. Pushpa (*supra*) and held that even claims made under OBC category are to be made before the cut-off date prescribed in the advertisement. In the case of Rakesh Kumar Sharma v. State (NCT of Delhi) & Ors., [(2013) 11 SCC 58], this Court has held that eligibility criteria/conditions are to be considered on the last date of receipt of applications.

In view of the acute problem of unemployment, whenever few vacancies are notified by any public authority, it is common that thousands of applicants apply for such posts. If the applicants are permitted to rectify applications after cut-off dates, the same would render the scrutiny process indefinite. In the course of such recruitment process, many persons, though they belong to the OBC

category or SC/ST category, might not have obtained the required caste certificate before the cut-off date. Such persons, being law abiding and being conscious of the bar contained in the notification of the cut-off date, might not have applied seeking employment. In case the authority starts accepting caste certificates subsequent to the prescribed cut-off dates whenever a candidate approaches the authority, the remaining candidates who had not applied would definitely be affected. If the applicants are allowed to submit certificates in proof of their claim of reservation subsequent to the notified cut-off date, it would create administrative chaos."

The instructions issued by the respondents for applying for the posts in question vis-a-vis uploading all relevant certificates inclusive of belonging to reserve categories, as on the date of applying within cut-off date, were mandatory. No lenient view in cases of violation of mandatory instructions cannot be taken as it can be treated as precedent by various other candidates, who might have also been disqualified for the same reason. The instructions are mandatory and have to be strictly complied with. In this regard it is apt to extract following paras from 2019 (11) Scale 537 titled State Of Tamil Nadu & Ors V/S G Hemalathaa & Anr:-

"7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said *M. Vennila v. Tamil Nadu Public Service Commission*, (2006) 3 Mad. LJ 376 (1999) 2 SCC 635 (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

For the foregoing reasons, rejection of the petitioner's candidature for want of compliance with mandatory instructions cannot be faulted with. Hence, we find no merit in this writ petition and the same is dismissed accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.